

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BOOTH OIL SITE ADMINISTRATIVE
GROUP,

Plaintiff,

v.

DECISION AND ORDER
98-CV-696A

GEORGE T. BOOTH, JR., et al.,

Defendants.

INTRODUCTION

Currently before the Court is a motion of plaintiff Booth Oil Site Administrative Group ("BOSAG") for various forms of relief, including: (1) an order compelling defendants Joseph Chaloub; Lonsdale Slater Schofield; George T. Booth, III; Ahsen Yelkin; Booth Oil Company, Inc. ("Booth Oil"); Schofield Oil Limited; 18958 Canada Limited; Speedy Oil Services, Inc.; Breslube Industries Limited; EC Holdings Corp; and Katherine Street Properties, Inc., as well as several non-defendants, to obtain and disclose their tax returns for the period June 6, 1985 to the present; (2) an order, pursuant to Rule 67 of the Federal Rules of Civil Procedure, requiring Booth Oil to deposit with the Court the contingency fund currently under its control, or in the alternative, an order, pursuant to Rule 66 of the Federal Rules of Civil Procedure, appointing a receiver to take control of the contingency fund, pursuant to Rule 66 of the Federal Rules of Civil Procedure; (3) an order permitting plaintiff BOSAG to file

pleadings on behalf of defendant Booth Oil to assert a cross-claim by Booth Oil against defendants Ahsen Yelkin and EC Holdings Corp.; (4) permission to conduct one additional day of deposition of defendant Ahsen Yelkin pursuant to Rules 30(a)(2)(B) and 26(b)(2)(A) of the Federal Rules of Civil Procedure; and (5) an order requiring the defendants to comply with Rule 7.1 of the Federal Rules of Civil Procedure, which requires nongovernmental corporate parties to file a statement identifying any parent corporation and any publicly held corporation that owns 10% or more of its stock or stating that there is no such corporation. Defendants have filed memoranda opposing BOSAG's various requests for relief.

DISCUSSION

A. Disclosure of Tax Returns

Plaintiff BOSAG requests that most of the named defendants, as well as several nondefendants, disclose their income tax returns for the years 1985 to present. The Court finds that such relief is appropriate under the facts and circumstances present here.

A litigant seeking production of tax returns must demonstrate that (1) the requested tax information is relevant to the subject matter of the action, and (2) there is a compelling need for the information because it is not otherwise readily available. See Trudeau v. New York State Consumer Protection Bd., 237 F.R.D. 325, 331-32 (N.D.N.Y. 2006). The Court finds that BOSAG has met this standard.

With regard to the first prong, the tax returns are relevant in this case for

two reasons. First, they are relevant to the accounting that the Court has ordered defendant Booth Oil to perform. The tax returns may include information regarding transfers of funds from Booth Oil to the various defendants. Second, with regard to at least some of the defendants, the tax returns are relevant to the issue of ability to pay if in fact CERCLA liability is found. The financial resources of the defendant is one equitable factor that may be considered in the CERCLA allocation process. See United States v. R.W. Meyer, Inc., 932 F.2d 568, 572-73 (6th Cir. 1991).

With regard to the second prong, BOSAG has shown that disclosure of the tax returns are needed to aid the Booth Oil accounting ordered by the Court. BOSAG's counsel represents in ¶ 27 of his affidavit that Booth Oil's counsel has communicated to him that records regarding several bank accounts formerly held by Booth Oil are no longer available because they have been destroyed in the ordinary course of business. None of the defendants has disputed this statement. Thus, there is a compelling need for disclosure of the tax returns.

In addition, the Court also finds that the disclosure of the requested tax returns will expedite resolution of this case. Defendants argue that disclosure of the tax returns is premature and that the Court should wait until the accounting is complete. However, this case is already almost ten years old and, in the interests of justice, must be expedited as much as possible.

Accordingly, the Court grants BOSAG's motion and shall order the defendants to obtain and disclose their tax returns for the period 1985 to the present.¹

¹ It is the Court's understanding that some of these tax returns have already been disclosed.

The Court will, however, require that the disclosure be subject to the same confidentiality agreement previously agreed to in this case.

The Court denies BOSAG's motion for disclosure of tax returns of nondefendants, without prejudice. If in the future it becomes apparent that such disclosure is necessary, BOSAG may again apply for such relief.

B. Deposit of Contingency Fund and Appointment of Receiver

BOSAG moves the Court for an order requiring defendant Booth Oil to deposit with the Court the contingency fund currently under its control, or in the alternative, appointing a receiver to take control of the contingency fund. The Court finds that such relief is not required at this time. Booth Oil is represented by competent counsel who will advise Booth Oil of its obligations regarding the fund.

C. Amendment of Booth Oil Pleadings

BOSAG has asked for an order permitting BOSAG, on behalf of defendant Booth Oil, to amend Booth Oil's pleadings to interpose a cross-claim by Booth Oil against defendants Ahsen Yelkin and AC Holdings Corp. As stated, Booth Oil is represented by competent counsel and if such a claim exists on behalf of Booth Oil, counsel is capable of advising Booth Oil as to whether or not it should assert such a claim. Accordingly, BOSAG's request for relief is denied, without prejudice.

D. Deposition of Defendant Ahsen Yelkin

BOSAG has asked for an additional day of deposition of defendant Ahsen Yelkin. The Court grants plaintiff's request. There shall be no further extensions, however.

E. Corporate Disclosure Statement

BOSAG asks that the Court require the defendants to file a corporate disclosure statement pursuant to Rule 7.1 of the Federal Rules of Civil Procedure.² The Court notes that this Rule was not in effect at the time this lawsuit was initially filed. Nevertheless, the Court shall order the corporate defendants to comply with Rule 7.1 by no later than February 18, 2008.

CONCLUSION

For the reasons stated, the Court: (1) grants BOSAG's motion requiring the defendants to obtain and disclose their tax returns for the years 1985 to present' (2) orders that such disclosure be made by March 3, 2008; (3) orders that any disclosure of tax returns be subject to the same confidentiality agreement previously agreed to in this case; (4) denies, without prejudice, BOSAG's request for various nondefendants to disclose tax returns; (5) denies, without prejudice, BOSAG's motion for an order requiring Booth Oil to deposit the contingency fund with the Court or appointing a receiver; (6) denies, without prejudice, BOSAG's motion to amend Booth Oil's pleadings

² This requirement is also present in Rule 5.1(e) of the Local Rules of Civil Procedure.

to interpose a cross-claim by Booth Oil against defendants Ahsen Yelkin and AC Holdings Corp.; (7) grants BOSAG's motion for one additional day of deposition of defendant Ahsen Yelkin; (8) orders that such deposition be completed by March 3, 2008.; (9) grants BOSAG's motion for an order requiring the corporate defendants to file corporate disclosure statements pursuant to Rule 7.1; and (10) orders that such disclosure statements be filed by February 18, 2008.

SO ORDERED.

s/ Richard J. Arcara
HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: January 28, 2007